SEP 28 1966

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 50

GENT, SWANK, BACHELOR, CAVALCADE, GENTLEMAN, ACE and SIR (MAGAZINES), and PAR PUBLICATIONS, INC., ROYAL PUBLICATIONS, INC., MAGTAB PUBLICATIONS CORP., SKYE PUBLISHING CO., INC., BRUCE-ROYAL PUBLISHING CO., FOUR STAR PUBLICATIONS, INC., and VOLITANT PUBLISHING CORP. ..... *Appellants*

v.

THE STATE OF ARKANSAS ..... *Appellee*

ON APPEAL FROM
THE SUPREME COURT OF ARKANSAS

BRIEF FOR APPELLEE

BRUCE BENNETT
Attorney General
State of Arkansas
FLETCHER JACKSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas
H. CLAY ROBINSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas
JACK L. LESSENBERRY
807 West Third Street
Little Rock, Arkansas
Counsel for Appellee

PARAGON PRINTING CO., LITTLE ROCK

INDEX

	Page
Opinion Below	1
Question Presented	2
Statutes Involved	2
Statement	3
Preface to Argument	5
Summary of Argument	6
Argument	9
Conclusion	20

Citations

Cases:

Albert *v.* California, 354 U.S. 476 (1957)	7,13
Butler *v.* Michigan, 352 U.S. 380 (1957)	12
Engineer *v.* Chicago R. I. & P. R. Co., 382 U.S. 423 (1966)	7,14
Florida Lime and Avocado Growers, Inc. *v.* Paul, 373 U.S. 132 (1963)	13
Freedman *v.* Maryland, 380 U.S. 51 (1964)	6,9
Kingsley, Books *v.* Brown, 354 U.S. 436 (1957)	6,9
Local 20 *v.* Morton, 377 U.S. 252 (1964)	13
Michel *v.* Louisiana, 350 U.S. 91 (1955)	7,12
Mishkin *v.* New York, 383 U.S. 502 (1966)	15
Near *v.* Minnesota, 283 U.S. 697 (1931)	8,9
People *v.* Kahan, 15 N.Y. 2d 311, 258 N.Y.S. 2d 391 (1965)	13

INDEX — (Continued)

	Page
Railway Mail Association *v.* Corsi, 326 U.S. 88 (1945)	7,13
Roth *v.* U.S., 354 U.S. 476 (1957)	6,7
Smith Chickeries *v.* Cummings, Judge, 276 S.W. 2d 48 (1955)	7,11
Smith *v.* California, 361 U.S. 147 (1959)	7,12
State *v.* Hudson County News Co., 188 A 2d, 444 (NY 1963)	8,17
State ex rel. Beil *v.* Mohoning Valley Distributing Agency, Inc., 109 N.E. 2d 48 (1960)	12
Times Film Corp. *v.* Chicago, 361 U.S. 147 (1959)	7
Statutes:	
Act No. 261, Acts of Arkansas 1961, codified as	2,6
Ark. Stat. Ann. Sections 41-2713—41-2728 (Repl. 1964)	2,14

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966
No. 50

GENT; SWANK, BACHELOR, CAVALCADE, GENTLEMAN, ACE and SIR (MAGAZINES), and PAR PUBLICATIONS, INC., ROYAL PUBLICATIONS, INC., MAGTAB PUBLICATIONS CORP., SKYE PUBLISHING CO., INC., BRUCE-ROYAL PUBLISHING CO., FOUR STAR PUBLICATIONS, INC., and VOLITANT PUBLISHING CORP. ..... *Appellants*

v.

THE STATE OF ARKANSAS ..... *Appellee*

ON APPEAL FROM
THE SUPREME COURT OF ARKANSAS

BRIEF FOR APPELLEE

OPINION BELOW

Both the majority (R.40-52) and dissenting (R.53-54) opinions of the Arkansas Supreme Court are reported at 239 Ark. 474, 393 S.W. 2d 219 (1966), and are recited verbatim in the printed record. A timely petition for rehearing was denied, but no opinion was published.

QUESTIONS PRESENTED

By order of this Court of May 16, 1966, noting probable jurisdiction, the questions presented for review are limited to the following issues.

1. Is Act 261 of the Acts of Arkansas 1961, which in essence seeks to govern the publication and distribution of obscene material to the public, invalid as impairing the freedom of expression protected by the First and Fourteenth Amendments to the Constitution of the United States in that it operates as a forbidden prior restraint on expression?

2. Is Act 261 of the Acts of Arkansas of 1961 invalid in that on its face and as applied it impairs the freedom of expression protected by the First and Fourteenth Amendments to the Constitution of the United States, as vague and uncertain?

STATUTES INVOLVED

The statute in controversy is Act No. 261, Acts of Arkansas 1961, codified as Ark. Stat. Ann. §§41-2713 — 41-2728 (Repl. 1964). The act is recited in full at Appendix A of the Brief for Appellants.

STATEMENT

The introduction of appellants' brief is a fair, if rather limited, resume of the circumstances which culminated in this appeal.

This litigation originated in Jefferson County, Arkansas, at the instigation of the prosecuting attorney pursuant to the authority of Act 261. The statute, which will be discussed subsequently in detail, provides *inter alia* for both injunctive relief and criminal prosecution against the possession or distribution of obscene material. On February 4, 1964, suit was instituted on probable cause that certain magazines were obscene, praying that those publications be declared to be obscene, that the sale of the magazines be enjoined and that the magazines be seized and destroyed (R.1-3). In response to the application of the prosecuting attorney, the chancellor ordered the publishers, the appellants herein, and the local distributors to show cause on or before March 12 why the complaint should not be favorably entertained (R.3-4). Each of the defendants in the court below, except *Gent Magazine*, answered the complaint raising several Federal Constitutional issues, and requesting reasonable time to prepare for a hearing (R.4-5, 6-8). An amendment to complaint was thereafter filed on March 25 (R.8-10) and a response was submitted on April 6 (R.10). It was not until April 24, 1964, that *Gent Magazine* and Parlor Publications, Inc., tendered a response to the complaint (R.11-12).

Apparently, the matter was scheduled for hearing by agreement of the parties. The chancellor impaneled an advisory jury and after the conclusion of all of the evidence, both the jury and the judge concluded that the magazines were obscene within the meaning of the statute

(R.28). The decree was entered against appellants enjoining the selling, exhibiting or commercially distributing any of the identified magazines by name and issuance date and provided that they be destroyed. The chancellor retained jurisdiction of the parties for such further hearings deemed necessary.

An appeal to the Arkansas Supreme Court was made and *Gent* was permitted to become a party. Upon briefing and oral argument, a divided court affirmed the conclusion of the chancellor (R.40-52, 53-54). Timely application for a rehearing was made and denied (R.56-60).

Notices of appeal were filed setting forth ten separate issues to be presented on appeal (R.61-63). Probable jurisdiction was noted on May 16, 1966, by this Court, but review was restricted to questions pertaining to prior restraint on expression and vagueness (R.64).

It is submitted that appellants' brief on the merits has overreached and exceeded the bounds of the questions expressly recited for review.[1] In fact, it is the view of appellee that appellants have devoted a greater portion of their brief to matters concerning "national standards", postal regulations, and burden on interstate commerce which were precisely rejected by the order of the Court. Confronted with the alternative of ignoring the arguments, appellee has reluctantly offered abbreviated treatment of those issues and has followed the organizational topics of appellants' brief.

---

[1] Supreme Court Rule 40; California *v.* Taylor, 353 U.S. 553, footnote 2 beginning on 556 (1957).

PREFACE TO ARGUMENT

On 16 May, 1966, the Court entered an "order noting probable jurisdiction" limiting the appeal to the first two questions listed in the jurisdictional statement.

The two questions accepted by the Court charge that the Act under consideration (1) "operates as a forbidden prior restraint on expression" and (2) "is vague and uncertain". Nevertheless that part of appellants' brief labeled Point I is in fact primarily concerned with arguments that the statute interferes with the postal laws, invades the Federal Governments' jurisdiction over interstate commerce, is procedurally deficient, etc., arguments which obviously are not within the ambit of the questions noted for probable jurisdiction. In the portion labeled Point II the appellants primarily argue that a "national standard" for defining obscenity should be required; this question had been expressly rejected by the Court in its order. Although we are certain that the Court will ignore these irrelevant arguments, we feel constrained to reply to them in our brief on the chance that the Court might disagree with our interpretation. However, we are expressly requesting that the Court ignore the immaterial portions of appellants' brief and our reply to these portions.

SUMMARY OF ARGUMENT

I

Act 261 does not impose an unconstitutional restraint on the interstate dissemination of literature.

A

Act 261 does not impose a "prior restraint" invalidly.

The statute in controversy, Act 261, was enacted in 1961, less than four years after the decisions of *Roth* v. *United States*, 354 U.S. 476 and *Kingsley Books, Inc.*, v. *Brown*, 354 U.S. 436 (1957). The General Assembly of Arkansas adopted the definition of obscenity suggested by a majority of the Court and, with additional safeguards, duplicated the provision for injunctive relief approved in *Kingsley Books*. This procedure in equity was approved later in *Freedman* v. *Maryland*, 380 U.S. 51 (1965).

B

Operation or Act 261 and its application to non-residents.

Act 261 does not operate to enjoin the publication of literature in any state except Arkansas. The suggestion of appellants that they should be governed by the law of the state where the magazines are published is untenable, because such a proposition would deprive each state of its inherent authority to legislate in this critical field and each of the other states would be governed by the law of the most liberal state in the union. While each state is free to adopt the most permissive type of act, it cannot adopt restrictions offensive to the Constitution.

Appellants cannot complain on appeal that the Arkansas trial court did not have personal jurisdiction of nonresidents since this matter was waived. *Michel* v. *Louisiana*, 350 U.S. 91 (1955); *Smith Chickeries* v. *Cummings, Judge*, 224 Ark. 743, 276 S.W. 2d 48 (1955).

C

The Arkansas statute against obscenity does not conflict with either the postal laws or the commerce clause.

For the first time, appellants interject that the Arkansas statute has been superseded by Federal occupation of the field of regulating obscenity in interstate commerce. This Court however, has consistently confirmed that prohibitions against obscenity are within the proper sphere of state police power. *Smith* v. *California*, 361 U.S. 147 (1959); *Times Film Corp.* v. *Chicago*, 355 U.S. 43 (1961). A review of the postal regulations and the decisions interpreting them, reveals no inconsistency with the state statute involved. *Alberts* v. *California*, 354 U.S. 476 1957; c.f. *Railway Mail Association* v. *Corsi*, 326 U.S. 88 (1945). The mere fact that a state statute may affect matters of interstate commerce does not in itself require a nullification of the state statute. *Engineers* v. *Chicago R.I. & P.R. Co.*, 382 U.S. 423 (1966).

II

Act 261 is not unconstitutional because of vagueness

The Arkansas enactment provides reasonable, ascertainable standards. The definition of obscenity is identical to that approved in *Roth* v. *United States*, 354 U.S. 476 (1957). Both the state trial court and the Arkansas Supreme Court ruled that the community standards should

be that of Pine Bluff, Jefferson County, Arkansas, where the trial was held. Unless the contrary is demonstrated, it is presumed that the standards of a particular county are the same as those in any other county in any other state or the nation. *State* v. *Hudson County News Co.*, 188 A. 2d 444 (N.Y. 1963).

The definitions contained in the Act describing mailable matter and nonmailable matter are unambiguous and serve not only to separate application of either civil or criminal prosecutions, but places the requirement for *scienter* in a reasonable status.

III

The Arkansas statute was not applied as a future restraint.

It is readily conceded that any attempt to prohibit publication or sale of anticipated or scheduled issues of appellants' magazines is unconstitutional. *Near* v. *Minnesota*, 283 U.S. 697 (1961). The decree of the state trial court did not act as a prior restraint on future issues of appellants' magazines. If there was any genuine question concerning the application of the decree, it was clarified by the opinion of the Arkansas Supreme Court. *Gent* v. *State*, 239 Ark. 474 (R.52).

It was not contemplated that Act 261 or any decrees of courts rendered pursuant to that statute would operate in any manner outside the jurisdiction of the court or the territorial limits of the State. No effort has been made to affect publications of appellants in Connecticut or New York, nor has any attempt been made to limit distribution of any issue of magazines except those identified by the decree of the chancery court.

ARGUMENT

I

Act 261 does not impose an unconstitutional restraint on the dissemination of literature.

A

Act 261 does not impose a "prior restraint".

We understand the term "prior restraint" to mean a restraint placed on the publication or distribution of printed matter which occurs before a judicial determination on whether or not the material violates some statutory scheme of regulation. The Arkansas statute in question does not permit any censorship or restraint before a judicial hearing to determine if the material would be obscene by the standards stated in the statute. Further, the injunction order is specifically limited in its application to named issues of the magazines and does not in any way affect the publication or distribution of future issues. Consequently, the statute in its application does not involve "prior restraint" unless one interprets that term to include all injunctive procedures against printed matter, whether the restraint occurs before or after a judicial determination of the obscenity issue. Such an interpretation would constitute a departure from previous rulings of this Court. See *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Kingsley Books* v. *Brown*, 354 U.S. 436 (1957); and *Freedman* v. *Maryland*, 380 U.S. 51 (1964).

As recently as 1957, this Court upheld the constitutionality of a New York statute which authorized injunctive relief against obscene literature. *Kingsley Books* v. *Brown*, *supra*. In that case, the distributor was en-

joined *pendente lite* from dissemination of certain paperback booklets. Although the temporary injunction constituted a prior restraint on the distribution of the booklets, nevertheless, this Court affirmed the New York Court of Appeals and rejected the claim that the statute was violative of the due process clause of the Fourteenth Amendment, stating:

> . . . The phrase "prior restraint" is not a self-wielding sword. Nor can it serve as a talismanic test. The duty of closer analysis and critical judgment in applying the thought behind the phrase has thus been authoritatively put by one who brings weighty learning to his support of constitutionally protected liberties: "What is needed," writes Professor Paul Freund, "is a pragmatic assessment of its operation in the particular circumstances. The generalization that prior restraint is particularly obnoxious in civil liberties cases must yield to more particularistic analysis." The Supreme Court and Civil Liberties, 4 V and L Rev. 533, 539 . . . [1 L ed 2d, p. 1474].

The New York procedure, unlike that permitted by the Arkansas statute, allows the entry of an injunction before adjudication of the obscenity question. Therefore, the Arkansas Act meets at least some of the objections raised by the dissenters to *Kingsley Books* decision. In *Freedman* v. *Maryland, supra,* the Court suggested that the New York procedure be adopted by Maryland:

> How or whether Maryland is to incorporate the required procedural safeguards in the statutory scheme is, of course, for the State to decide. But a model is not lacking: In *Kingsley Books, Inc.* v. *Brown,* 354 U.S. 436, 1 L ed 2d 1469, 77 S Ct 1325, we upheld a New York injunctive procedure designed to prevent the sale of obscene

> books. That procedure postpones any restraint against sale until a judicial determination of obscenity following notice and an adversary hearing. . . . [13 L ed 2d, p. 655].

If the New York procedure is valid, then the Arkansas procedure, which does not permit any prior limitation on publication, is also valid. This Court upheld the New York procedure in *Kingsley Books* and reiterated its approval in *Freedman*. Therefore, the Arkansas statute does not impose an unconstitutional prior restraint on the publication of literature.

B

Operation of Act 261 and its application to nonresidents.

Next appellants manufacture a legal fiction that Act 261 acts to enjoin the publication of literature in the State of New York and thereby operates as a prior restraint. A reading of the State proceedings, however, fails to substantiate this conclusion. If there is any doubt, appellee here concedes that the trial court may effectively operate within its jurisdictional limits and any attempt to exceed those bounds amounts to but a nullity.

In this same context, appellants raise, for the first time, the manner in which jurisdiction was secured as to the nonresident appellants. No objection was even intimated by their pleadings before the trial court and no mention was made on appeal before the Arkansas Supreme Court. Moreover, by responding to the complaint, appellants consented to the Jefferson Chancery Court's hearing the matter and, by so doing, effectively waived any subsequent complaint based on jurisdiction. *Smith Chickeries* v. *Cummings, Judge,* 224 Ark. 743, 276 S.W.

2d 48 (1955); *Strahan* v. *The Atlanta National Bank*, 206 Ark. 522, 176 S.W. 2d 237 (1943). In this composure it is too late for appellants to interject this issue, for this Court has firmly adhered to the practice of not entertaining matters not properly presented to the court below. *Michel* v. *Louisiana*, 350 U.S. 91 (1955).

C

The Arkansas statute against obscenity does not conflict with either the Postal Laws or the Commerce Clause.

By reference to postal statutes and interstate commerce regulations, appellants interject, for the first time, that the Arkansas statute has been superseded by virtue of federal occupation of the field of regulating obscenity and interstate commerce. It is submitted, however, that a supposed conflict of federal and state statutes rests upon an erroneous interpretation of the operation of the Arkansas statute as well as a misconception of the operation of federal regulations and laws.

The suggestion of federal pre-emption of state obscenity statutes is not of first impression. On the contrary, this Court has consistently confirmed that prohibitions against obscenity are within the proper sphere of state police power. *Smith* v. *California*, 361 U.S. 147 (1959).

This authority is qualified, of course, by a criterion of reasonableness and must not run afoul of or conflict with constitutional provisions and prohibitions. *Butler* v. *Michigan*, 352 U.S. 380 (1957). The extent of this power or an attempt to define its outer limits is fruitless, for each case must be determined on its own facts. *State ex rel. Beil* v. *Mohoning Valley Distributing Agency, Inc.*,

84 Ohio L. Abs. 427, 109 N.S. 2d 48, aff'd 116 Ohio App. 57, 186 N.E. 2d 631 (1960); *People* v. *Kahan*, 15 N.Y. 2d 311, 258 N.Y.S. 2d 391 (1965).

Both the state and federal judiciary have adhered to the principle that where a statute is susceptible to two interpretations, one valid and the other invalid, that of validity will be adopted. Where there are two apparently conflicting statutes, every effort will be made to construe them in *pari materia*. *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440 (1960).

It is agreed that the Congress of the United States has discretion to exercise complete authority over a subject in interstate commerce. It should be granted by appellants that both federal and state statutes may operate and govern the same issues so long as the presence of the latter does not frustrate the operation of the former. *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963). In absence of a clear manifestation of legislative purpose, it is recognized that the federal enactment must be so comprehensive as to be imcompatible with the local law before the Supremacy Clause will be invoked to supersede the conflicting state statute. *Local 20* v. *Morton*, 377 U.S. 252 (1964).

The only federal regulation recited by appellants is 18 U.S.C. §1461. A review of that statute, and the decisions interpreting it, reveals no inconsistency with the state statutes involved. Cf. *Railway Mail Association* v. *Corsi*, 326 U.S. 88 at 96 (1945); U.S. Const. Act I. §8, d. 7; *Alberts* v. *California*, 354 U.S. 476 (1957).

The mere fact that a state statute may operate and even affect to some degree matter involving interstate commerce, does not in itself require nullification of the

state statutes. *Engineers* v. *Chicago R. I. & P. R. Co.*, 382 U.S. 423 (1966).

The present case and the record confirms that the Arkansas statute, like many others enacted by the several other states, does not impose any undue restrictions on interstate commerce and does not conflict with the powers and duties of Congress in regard to the establishment of postal regulations.

II

Act 261 is not unconstitutional because of vagueness.

The second principal topic of appellants' brief suggests that the statute in controversy is not sufficiently definitive to satisfy the constitutional demand of certainty to apprise the public of exactly what is prohibited. The complaint apparently stems from three separate contentions. Each is discussed in the order of appearance in appellants' brief.

First, appellants criticize the statutory definition of obscene as being inadequate and not comporting with the pronouncements of this Court. This is quite remarkable inasmuch as the General Assembly adopted almost verbatim the expression approved in *Roth* v. *United States*, 354 U.S. 476, 489 (1957).

A casual perusal of the statute reveals no ambiguity. The material as a whole is obscene simply if, by applying contemporary community standards, it appeals to prurient interests. Ark. Stat. Ann. §41-2715 (2) (Repl. 1964). Most recently, a challenge of the definition of obscenity

as being impermissibly vague was rejected in *Mishkin* v. *New York*, 383 U.S. 502, 507 (1966).

The majority opinion in *Roth* recognized the problem of preciseness, stating at 354 U.S. 476:

> "Many decisions have recognized that these terms of obscenity statutes are not precise. This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of duce process. . . . [T]he Constitution does not require impossible standards; all that is required is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . . *United States* v. *Petrillo*, . . . These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark . . . boundaries sufficiently distinct for judges and juries fairly to administer the law. . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. . . .
>
> "In summary, then, we hold that these statutes, applied according to the proper standard for judging obscenity, do not offend constitutional safeguards against convictions based upon protected material, or fail to give men in acting adequate notice of what is prohibited. . . ."

The second proposition promoted by appellants is primarily an attack of the use of community standards. Concisely put, appellants say that the use of community standards as in the case of Pine Bluff " . . . is an impermissable restraint on the [freedom of the] press."

It is asserted that the Supreme Court of Arkansas, by not applying a national standard, violated the ruling in *Jacobellis* v. *Ohio*, 378 U.S. 184 (1964). However, although the national standard question was squarely presented in the case, it was not accepted by a majority of this Court.

The confusion expressed by appellants as to what is meant by community standards is totally lacking in substance. The Supreme Court of Arkansas experienced no difficulty in resolving that the standards of the community of Pine Bluff should be applied,[2] it concluded:

> " . . . We think the evidence clearly established that the contents of the magazines in question are not compatible with the contemporary standards in Pine Bluff, Arkansas."

In the case at bar, the venue was Jefferson County and the court was held in Pine Bluff. Jefferson County is the third largest populated county in Arkansas and Pine Bluff ranks third as an urban area in the State. Although it is possible it is not probable that the views of witnesses and the conclusion of a jury in Pine Bluff would vary alterably from any other area of Arkansas or the Nation.

At least one case has held that it could indulge in a presumption that the community standards of a particular county were the same as those in any other county in the state or Nation unless the contrary was demonstrated.

---

[2]In Arkansas, a chancellor may impanel a jury in an advisory capacity of factual issues. Ringold *v.* Patterson, 15 Ark. 209 (1854). Ordinarily, findings by a jury are conclusive if supported by substantial evidence, but matters of equity are heard de novo on appeal. A and B *v.* C and D, 239 Ark. 406, 390 S.W. 2d 116 (1965) cert. den. 382 U.S. 926.

State v. *Hudson County News Co.*, 188 A. 2d 444 (N.Y. 1963).

The concluding argument in this topic is directed at the definition of "mailable matter."[3] By the introduction of the statute, it is clear that reference is restricted to material that could be properly and physically deposited for mail delivery. This material is reduced to two categories: (a) That which has not been disapproved by a appropriate postal authorities; and, (b) That material which has not been determined to be either proper or improper as mailable.

[3]Appellants' brief, 15; Ark. Stat. Ann. Sec. 41-2715 (1) (Repl. 1965)

In deference to all, the statute seems insusceptible to interpretation. It matters not how the material is transported or delivered. The obvious purpose of the "mailable" provision is that such material is placed in a protected plateau and exempts criminal prosecution until judicial resolution to the contrary. In this manner, criminal intent is placed in a reasonable status.

III

The Arkansas statute was not applied as a future restraint.

The concluding argument of appellants' brief challenges the decree of the trial court as constituting a prior restraint or future issues of appellants' magazines. It may be gleaned from the devotion of less than two pages on this point that appellants recognize the lack of substance to this anemic argument.

Initially, it is submitted that the decree did not literally forbid or enjoin the distribution or sale of future

issues of magazine. In fact the decree specifically identified each issue of the magazine by date (R.28-30).

It is readily conceded that any attempt to prohibit publications or sale of anticipated or scheduled issues is unconstitutional. *Near* v. *Minnesota*, 283 U.S. 697 (1931). This identical question was presented to the Arkansas Supreme Court and decided in favor of appellants, holding:

> "Appellants contend that the injunction granted by the Chancellor is clearly illegal in that it bans future issues of the magazines. The Attorney General concedes that the dissemination of future issues of publication may not be enjoined simply because its past issues have been found to be offensive. But we, like the Attorney General, do not find that the injunction operates to that extent. The decree clearly provides that the particular issues of the pertinent magazines (introduced into evidence) shall not be sold, but it does not enjoin future issues. The court simply finds that future distribution or sale of future issues of the magazine will be enjoined upon a showing that such magazines are obscene. This means, of course, that a hearing (or trial) would be held before any order was rendered [fol.332]. Actually, the trial court would have the authority, upon proper complaint being made, to hold such a hearing, irrespective of whether reference was made to future issues in the present decree" (R.52).

If this Court is governed by the interpretation of state laws by state courts, then similarly the same confidence should be given the rulings and interpretations of the Arkansas Supreme Court of the judgments of lower state courts. Thus, the Arkansas Supreme Court has acted to clarify any inconsistency or defect of the chancellor's order.

At a final remark, appellants urge that the Jefferson Chancery Court has ordered all copies of appellants magazine to be destroyed. It is insinuated that the order is to apply universally and failure of appellants to comply will result in impending extradition or a finding of contempt. The fear exuded by appellants is totally unfounded.

Frankly, what is published or read in New York or Connecticut, except for maintainance of national morals, is of little concern to the citizens of Pine Bluff. Those states are sovereign bodies with capable, dedicated officials who presumably will fulfill and have discharged, the obligation of their capacities. It may be confidently stated that if a publisher residing in Pine Bluff delivered obscene material to either of those states, appropriate action could and should be taken to prevent that material from reaching the public in those states.

CONCLUSION

This case is extremely important not only to the State of Arkansas but to each of the other states as well. Many of the constitutional guaranties remain delicately balanced by equally valued and traditionally honored operation of state police power.

The police power is a valuable and sacred trust fixed in the people. It sprang with the development of civilization and has nurtured an orderly society. It should remain intact.

Respectfully submitted,

BRUCE BENNETT
Attorney General
State of Arkansas

FLETCHER JACKSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas

H. CLAY ROBINSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas

JACK L. LESSENBERRY
807 West Third Street
Little Rock, Arkansas
Counsel for Appellee

September, 1966